

APPENDIX 4

SUMMARY OF COURT DECISIONS

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### **Bingaman v. Dept. of the Treasury (1997)**

- Adopted from *Hobbs*
  - Factors--TEST
    - (1) Contact with suspected or known criminals
    - (2) Authorization to carry a weapon....
    - (3) Give Miranda Warnings to witnesses....
    - (4) Working overtime frequently
    - (5) Requirement to be on call 24 hours a day
    - (6) Requirement to maintain a level of physical fitness
- Under 5 CFR 831.902 and 842.802, the definition of LEO positions “does not include an employee whose primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting violations of law, or investigation person other than persons who are suspected of criminal offenses.”
- Otherwise known as the exclusion

### **Watson v. Dept. of the Navy (2001)**

- “Position Oriented Approach”
  - Basic Reason For the Existence of the Position
  - *Watson*, “more affirmatively considered the reasons for the creation and existence of positions than ...the officers “actual, even if incidental or occasional duties.”
  - The actual duties carried out by federal employees would be relevant only if they run counter to the reasons for the existence of the positions.

#### **Five Most Probative Factors (Law Enforcement)—TEST-**

- 1): Whether the officers are merely guarding life and property or whether the officers are instead more frequently pursuing or detaining criminals
- 2): Whether there is an early mandatory retirement age
- 3): Whether there is a youthful maximum entry age
- 4): Whether the job is physically demanding so as to require a youthful workforce.
- 5); Whether the officer is exposed to hazard or danger

### **Dodd v. USDOJ (2003)**

- In *Watson*, the Federal Circuit articulated certain most probative factors.  
*Instructive to Fire Fighters*

- (1) There is an early mandatory retirement age.
- (2) There is a youthful maximum entry age for the position.
- (3) the job is physically demanding so as to require a youthful workforce
- (4) the employee is exposed to hazard or danger.

The Board has developed a “position-oriented” approach for determining credit eligibility that focuses upon the reason for the existence of the position in question, which is the first prong of OPM’s test.

**Crowley v. U.S. (2005)—TEST-**

- Physical Vigorousness
  - The most important consideration in our position oriented approach of LEO determinations is the physical vigorousness required by the position in question.
  - 1: Strenuous physical fitness requirements
  - 2: Age requirements (such as a mandatory retirement age or a maximum entry age)
  - 3: Requirement that an employee be on call twenty four hours a day.

**Fagergren v. Dept. of the Interior (2005)**

- “Even though his duties did include apprehension of criminal suspects and investigation of criminal violations, most of his duty performance involved maintaining order protecting life and property, and guarding against or inspecting for violations of law.
- “The appellant did not establish that his positions require a level of physical fitness, had age limitations, or was particularly hazardous.”